IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1737/1996

Khayali Ram. vs. State of Rajasthan and others.

Date : 6.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SL Jain, for the petitioner.

Mr.S Sharma) for the respondents.
Mrs.RR Kanwar, Dy.GA)

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BY THE COURT :

Heard learned counsel for the parties.

The present writ petition has been preferred by the petitioner to challenge the order dated 11.7.1990 by which the Board of Revenue allowed the revision petition preferred by respondent no.4 Sher Singh which was preferred against the order of Additional Commissioner Colonisation cum Revenue Appellate Authority, Bikaner dated 5.8.1983 and set aside the allotment of land made in favour of the present

petitioner and which was dated 7.3.1980.

Brief facts of the case are that the petitioner as well as the respondent no.4 both applied for allotment of agriculture land as small patch since both were having agriculture land adjoining to the land in question which is only 4 bighas 18 biswas in measurement, therefore, the learned allotting authority by drawing lot allotted the land in favour of the petitioner vide order dated 7.3.1980. The order dated 7.3.1980 was challenged by the respondent no.4 by preferring appeal before Additional Colonisation Commissioner. The appeal was delayed by few days. The delay was condoned by the appellate authority. The appellate authority rejected the contention of the respondent no.4 that no slip of his name was put in the lot and, therefore, the land was illegally allotted to the the petitioner and dismissed the appeal. Aggrieved against the order dated 5.8.1983 of the appellate authority, the respondent no.4 preferred revision petition before the Board of Revenue. The Board of Revenue observed that on the slips, the Assistant Colonisation Commissioner has not put his signatures and the signatures on the slip were not tallying with the signatures of the Assistant Colonisation Commissioner which are available on the note-sheet. Therefore, the Board of Revenue was of the view that

there was just and valid apprehension in the mind of the respondent no.4 that the draw was not in accordance with law. Therefore, the Board of Revenue vide impugned order dated 11.7.1990 allowed the revision petition and set aside the order dated 5.8.1983 of the appellate authority as well as the allotment order dated 7.3.1980 and remanded the matter back to the allotting authority for making the allotment of the land as per the rules.

Learned counsel for the petitioner submitted that the Board of Revenue committed serious error of law in allowing the revision petition in a matter where the lottery was in the presence of the respondent no.4 himself and he did not register objection at that time and did not prefer appeal in time. Therefore, the objection of the respondent no.4 on the face of it is after thought. It is submitted that as per the rules prevalent at the relevant time, the procedure was for drawing the lot only. Therefore, the Board of Revenue should not have set aside the allotment order which was passed in favour of the petitioner. It is further submitted that the Board of Revenue committed error of law in holding that since there are different signatures on the slip than the signatures of the Assistant Colonisation Commissioner available on the note-sheet, therefore, the entire process of allotment of land by picking the slip from the lot is illegal. It

is submitted that it was not the case of the respondent no.4 that his slip was there but it was not signed by the allotting authority.

Learned counsel for the petitioner further submitted that by this time, more than 26 years have already passed to the allotment of land to the petitioner. Therefore also, the petitioner cannot be dispossessed from the land.

At this time, during the course of dictation of order, learned counsel for the petitioner submitted that the respondent no.4 died in the year 1999. This information has been given by the learned counsel for the petitioner from his own file. In view of this, the writ petition could have been dismissed as order in favour of a dead person cannot be set aside unless his legal representatives are made party but there are other reasons for dismissing the writ petition, therefore, instead of dismissing the writ petition on this ground, the writ petition is decided on merits.

It will be relevant to mention here that the petitioner has challenged the order of the Board of Revenue dated 11.7.1990 by preferring this writ petition on 3.6.1996 after a delay of 6 years. In the writ petition, the petitioner mentioned that the petitioner is an illiterate person and his brother was

pursuing the revision before the Board of Revenue and the petitioner was living at his village. The petitioner's brother died, therefore, the petitioner had no information about the decision given by the Board of Revenue in the year 1990 or thereafter. The petitioner preferred this writ petition when he received notice from Dy. Collector, Raisinghnagar in which it is stated that small patch of land is going to put to auction and the petitioner was asked to participate in the auction. Therefore, the petitioner has filed the writ petition when he got the knowledge about the order passed by the Board of Revenue.

The above contention of the petitioner cannot be accepted as the petitioner has neither disclosed the name of his brother nor disclosed when his brother died. Even this Court vide order dated 2.5.2006 directed the petitioner to give details about his brother and date of his death. The petitioner was given time for furnishing necessary details but despite passing more than one year, no details have been submitted by the petitioner. The writ petition of the petitioner is, therefore, liable to be dismissed on this ground of non-compliance of the order of this Court dated 2.5.2006.

Further, on merits also, I do not find any reason

to interfere in the order dated 11.7.1990 which has been passed on the satisfaction recorded by the Board of Revenue on perusal of the slips which cast heavy doubt about the fairness in allotment.

In view of the above reasons, this writ petition is hereby dismissed.

At this stage, learned counsel for the petitioner submitted that there is possibility that in pursuance of the order of the Board of Revenue, the land might have been re-allotted to the petitioner. In the present litigation, the only dispute is with respect to the original allotment made in favour of the petitioner which was set aside by the Board of Revenue. Therefore, if the land was allotted to the petitioner subsequent to the decision of the Board of Revenue and has not been challenged by the respondents, then the rights accrued to him because of subsequent allotment of same land to the petitioner (if any), are not affected because of the dismissal of this writ petition.

(PRAKASH TATIA), J.

S.Phophaliya